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**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number (Optional)

06502.0577-00000

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on \_\_\_\_\_

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Application Number

10/767,345

Filed

January 30, 2004

First Named Inventor

James B. CLARK

Art Unit

2145

Examiner

Adnan M. Mirza

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- applicant/inventor.
- assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
- attorney or agent of record.  
Registration number \_\_\_\_\_.
- attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

Signature

Jeffrey A. Berkowitz

Typed or printed name

571-203-2710

Telephone number

June 18, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.  
Submit multiple forms if more than one signature is required, see below\*.

\*Total of 3 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PATENT  
Customer No. 22,852  
Attorney Docket No.: 06502.0577

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: )  
James B. CLARKE et al. ) Group Art Unit: 2145  
Application No.: 10/767,345 ) Examiner: A. M. Mirza  
Filed: January 30, 2004 )  
For: DYNAMIC PROVISIONING OF ) Confirmation No.: 5235  
IDENTIFICATION SERVICES IN A )  
DISTRIBUTED SYSTEM )  
)

**Mail Stop AF**  
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Sir:

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Applicants request a pre-appeal brief review of the rejections set forth in the final Office Action mailed April 16, 2008, the period for response being July 16, 2008.

Applicants respectfully assert that (1) the application has been at least twice rejected; (2) this request is being filed concurrently with a Notice of Appeal; (3) this request is being filed prior to an Appeal Brief; and (4) this request is five or less pages in length, all in accordance with the guidelines set forth in the Official Gazette Notice of July 12, 2005. Applicants request the prompt review of the Examiner's rejections set forth in the Final Office Action.

**Rejections Under 35 U.S.C. § 102(e)**

Claims 1-22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Publication No. 2005/0086239 to Swann et al. ("Swann").

Applicants respectfully traverse the rejection of claims 1-22 under 35 U.S.C. § 102(b). In order to anticipate Applicants' claimed invention under 35 U.S.C. § 102, each and every element of the claim in issue must be found, "either expressly or inherently described, in a single prior art reference." "The identical invention must be shown in as complete detail as is contained in the . . . claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)." See M.P.E.P. § 2131, (8th ed., 2001). Applicants respectfully submit that Swann does not anticipate claims 1-22, in particular, independent claims 1, 11, and 17, because the reference fails to teach each and every limitation of the claims.

In particular, Swann fails to teach at least the claimed element of "dynamically creating an application corresponding to a service element, if the application corresponding to the service element is not running in the distributed system," as recited in claims 1, 11, and 17.

The Examiner alleges that Swann teaches the above-recited element, stating that Swann discloses that "[t]he system can give [the user] the ability to create dynamic reports from their defined fields, not from fields that some [sic] else has pre-selected and implemented as part of the application." Office Action at page 5. This is incorrect.

Swann teaches a system that allows a user to modify the underlying data design of an existing application (e.g., an asset management application) without changing the design of the database tables and database structure using configurable templates.

According to Swann, a user may configure the templates to modify an existing application such that it is customized to that user's needs. Swann at ¶ 186. For example, using templates, a user may modify an existing application to store user-defined data in a user-defined field. Swann at ¶ 2, Swann discloses that "the existence of templates with the functionality to modify the underlying data design of a software application can be thought of as an interactive interface layer between the application and the database." Swann further teaches a graphical user interface, called a Query Builder, for submitting customized queries to the application and generating customized reports. Swann at ¶¶ 20, 540. A user may pick from user-defined data and fields to "create dynamic reports from their defined fields." Swann at ¶ 540. "For example, a query 106 requesting the number of jet planes exceeding 50 years in age could result in a [report] of zero." Swann at ¶ 63. Thus, Swann teaches using a user-interface to access an existing application to generate searches that result in reports.

Nowhere does Swann teach or suggest "dynamically creating an application corresponding to a service element, if the application corresponding to the service element is not running in the distributed system," as recited in claims 1, 11, and 17.

Because Swann does not teach each and every limitation of claims 1, 11, and 17, Swann cannot anticipate claims 1, 11, and 17. Thus, claims 1, 11, and 17 are allowable for at least these reasons. Claims 2-10 are also allowable at least due to their depending from claim 1 and furthermore because they recite additional elements not disclosed in Swann. For example, Swann does not teach the step of dynamically creating an application further comprising "for each of the service elements, determining whether an application corresponding to the service element is running in the distributed system," as

recited in claim 2. Claims 12-16 are also allowable at least due to their depending from claim 11 and furthermore because they recite additional elements not disclosed in Swann. For instance, Swann does not teach the step of dynamically creating an application further including "downloading code for the application corresponding to each service element from a code server in the distributed system; and registering the application corresponding to each service element with a registry service in the distributed system." Claims 18-22 are also allowable at least due to their depending from claim 17 and furthermore because they recite additional elements no disclosed in Swann. Accordingly, Swann cannot anticipate claims 1-22.

In view of the foregoing arguments and the Reply to Office Action filed January 18, 2008, Applicants request that the rejection of these claims be withdrawn and the claims be allowed.

Please grant any extensions of time required to enter this response and charge any additional required fee payments to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: June 18, 2008

By:   
Jeffrey A. Berkowitz  
Reg. No. 36,743  
*for*